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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6216  
DATE COMPLAINT FILED: 10/06/2009  
DATE SUPPLEMENT FILED: 10/21/2009  
DATES OF NOTIFICATION: 10/14/2009;  
10/26/2009; 11/24/2009  
LAST RESPONSE RECEIVED: 12/15/2009  
DATE ACTIVATED: 12/29/2009

EXPIRATION OF SOL: 11/01/2013

**COMPLAINANT:**

**Massachusetts Republican Party**

**RESPONDENTS:**

**Martha Coakley**  
**Coakley for Senate and Nathaniel C. Stinnet, in his**  
**official capacity as treasurer**  
**Coakley (State) Committee**

**RELEVANT STATUTES:**

**2 U.S.C. § 434(b)**  
**2 U.S.C. § 441i(e)**  
**11 C.F.R. § 110.3(d)**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports**

**OTHER AGENCIES CHECKED:**

**Massachusetts Office of Campaign and Political**  
**Finance**

**I. INTRODUCTION**

The complaint in this matter alleges that Martha Coakley, the Massachusetts Attorney General and the Democratic nominee for the U.S. Senate in the January 19, 2010, special election, used her state campaign committee to pay for consultants that benefited Coakley's federal campaign and to purchase assets that were then transferred to her federal committee, including a fundraising database, a redesigned website, various domain names, and campaign paraphernalia used during her Senate campaign announcement, all allegedly in violation of

2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d). In addition, a supplemental complaint was filed providing more detail about the consultants who worked for Coakley's state committee, and later her federal committee.

While the responses by Coakley's federal and state committees assert that the state-to-federal asset transfer and the use of state campaign funds to hire consultants were in compliance with state and federal law and did not violate the Act, the responses offer only cursory explanations for these activities.<sup>1</sup> They do not provide specific information refuting the allegations in the complaint, nor is such information available from either committee's state or federal disclosure reports or other public sources. We therefore recommend that the Commission find reason to believe that:

- Coakley for Senate and Nathaniel C. Stinnet, in his official capacity as treasurer ("Federal Committee"), violated 2 U.S.C. §§ 434(b) and 441i(e)(1)(A) and 11 C.F.R. § 110.3(d);
- Martha Coakley violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d); and
- Coakley (State) Committee ("State Committee") violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).<sup>2</sup>

We also recommend that the Commission authorize the use of compulsory process to conduct a limited investigation into this activity.

<sup>1</sup> Martha Coakley did not personally file a response.

<sup>2</sup> The complaint does not explicitly claim that the Coakley violated the Act by failing to comply with the Commission's "testing the waters" regulations at 11 C.F.R. §§ 100.72 and 100.131. As part of their responses, however, Coakley's federal and state committees specifically denied that they violated "testing the waters" provisions. See Response of Coakley for Senate, at 3; Response of Coakley (State) Committee, at 3. Because the complaint does not specifically allege a "testing the waters" violation, nor does it provide sufficient information about the purpose of the activities of the consultants and the assets transferred to the Federal Committee to suggest a violation, this report does not contain an analysis or recommendations regarding this issue.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 Martha Coakley is the Massachusetts Attorney General and was the Democratic nominee  
4 for the U.S. Senate in the January 19, 2010, special election. She formally declared her Senate  
5 candidacy on September 3, 2009, filing her Statement of Candidacy and her federal  
6 committee's Statement of Organization the same day. The complaint alleges that, before this  
7 date, Coakley used the State Committee to pay for federal exploratory activity and produce a  
8 "quick launch" of her Senate campaign.<sup>3</sup> According to the complaint, the State Committee used  
9 state campaign funds to benefit the Federal Committee in two ways:

- 10 • The State Committee paid to hire Kevin Conroy, the eventual campaign manager for her  
11 federal campaign, and Alex Zaroulis, her spokeswoman, in August 2009, and paid for  
12 work by two consulting firms, 4C Partners LLC and Liberty Square Group, that benefited  
13 the federal campaign;
- 14 • The State Committee paid to buy a fundraising database, redesign Coakley's website,  
15 and secure 37 variations of "marthacoakley.com," and bought \$6,000 worth of yard signs,  
16 posters, buttons, lanyards, and t-shirts featuring her generic campaign logo that were used  
17 when Coakley announced her candidacy, then sold these assets to the federal committee  
18 for \$35,725 pursuant to an asset sale agreement on the same day Coakley announced her  
19 candidacy; and

20 Respondents have denied that the State Committee improperly paid for federal exploratory  
21 activity, asserting that Coakley hired political consultants for her state reelection in 2010, and  
22 that both committees were in compliance with state and federal laws.<sup>4</sup>

23 **1. Consultants**

24 The State Committee hired campaign staff and several consultants within the month  
25 before Coakley announced her Senate candidacy on September 3, 2009, "even though [Coakley]

<sup>3</sup> See Complaint at 2.

<sup>4</sup> See Response of Coakley for Senate, at 3; Response of Coakley (State) Committee, at 3.

1 faces no challengers for the 2010 attorney general race.”<sup>5</sup> In particular, according to the  
2 complaint, the State Committee hired Alex Zaroulis on August 1, 2009, and Kevin Conroy on  
3 August 17, 2009, who switched to the Senate campaign after Coakley announced her candidacy  
4 and allowed her to launch her campaign quickly.<sup>6</sup> Although the complaint alleges that the early  
5 hiring of these “key individuals” improperly benefited Coakley’s federal campaign, Coakley  
6 representatives asserted publicly that these consultants initially were hired for the state  
7 campaign.<sup>7</sup> Zaroulis, who ran Coakley’s communications for the Senate race, claims that she  
8 “was paid \$2,000 from Coakley’s state account because she was originally hired for the attorney  
9 general’s race.”<sup>8</sup> Zaroulis also explained the hiring of Conroy, the Federal Committee’s eventual  
10 campaign manager, by stating, “It is not unusual for a state campaign to hire campaign staff  
11 months, even a year, in advance to prepare for an election. Kevin Conroy was hired for that  
12 purpose.”<sup>9</sup>

13 The State Committee also paid

- 14 • \$9,000 in June and July 2009 for consulting services by a Washington political consulting  
15 firm, 4C Partners, LLC;
- 16 • \$716 in August 2009 to reimburse travel expenses of 4C worker Julia Hoffman, who  
17 went on the state campaign payroll in December 2008; and
- 18 • \$12,000 combined to Liberty Square Group, in June and August of 2009.<sup>10</sup>

<sup>5</sup> Complaint Attach. 1 (Hillary Chabot, *Martha Coakley Used Campaign Cash on Fed Race Query*, BOSTON HERALD, Sept. 2, 2009); see also Complaint at 4.

<sup>6</sup> Complaint at 2 and Attach. 2 (Glen Johnson, *Mass. AG Maneuvered for Year for Kennedy Race*, ASSOCIATED PRESS, Sept. 10, 2009).

<sup>7</sup> See Dave Wedge, *\$30G in Funds Paid to AG's Consultants Eyed*, BOSTON HERALD, Oct. 17, 2009, at A4.

<sup>8</sup> See Chabot, *supra*; see also Johnson, *supra* (quoting Zaroulis as saying “I was hired for the AG’s race.”).

<sup>9</sup> Johnson, *supra*.

<sup>10</sup> See *id.* In addition to these amounts alleged in the complaint, the State Committee paid Liberty Square Group \$6,000 in July 2009. See Reports of Martha Coakley, Massachusetts Office of Campaign and Political Finance (“OCPPF”), available at <http://www.efs.cpf.state.ma.us/SearchReportResults.aspx?cpfid=13182> (last visited March 12, 2010).

Both 4C Partners, LLC and Liberty Square Group were retained by the Federal Committee after Coakley announced her candidacy on September 3, 2009.<sup>11</sup>

## 2. Transfer of Assets

According to the complaint, the State Committee used campaign funds to buy a fundraising database, redesign her website, secure domain names, and purchase \$6,000 worth of yard signs, posters, buttons, lanyards and T-shirts featuring her campaign logo, then sold these assets to the Federal Committee for \$35,725 on the same day that Coakley announced her candidacy.<sup>12</sup> Coakley's federal and state committees reported this transaction, although prior entries for disbursements by the State Committee cannot be readily identified as the source of payment for the assets later transferred on September 3, 2009.<sup>13</sup> Coakley also publicly disclosed the existence of an asset sale agreement between her state and federal campaign committees at the time she declared her candidacy.<sup>14</sup> Neither committee, however, provided a copy of the agreement with its response.

## B. Analysis

The complaint alleges that Coakley used her state campaign account to pay for exploratory U.S. Senate campaign expenses in violation of the Act. This allegation implicates a potential violation of 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d) for transferring nonfederal funds to the candidate's principal campaign committee, and, in turn, potential violations of

<sup>11</sup> See Complaint at 3.

<sup>12</sup> See *id.* at 2.

<sup>13</sup> On the same day that Coakley announced her candidacy, the Federal Committee made a \$35,725 disbursement to the State Committee for the "Purchase of Assets from State Committee to Federal Committee." See Coakley for Senate, October 2009 Quarterly Report, at 2887. One week later, the State Committee reported receiving \$35,725 from "Martha Coakley, for Senate Committee" for "Federal Committee purchasing State Committee Assets." See Reports of Martha Coakley, OCPF, *supra*. This entry in the State Committee's Massachusetts' campaign finance report included a notation: "\$ to be Purged to Charity MA 02129." On November 25, 2009, the State Committee reported making an expenditure for the purpose of a "Donation" to Genise Hopperage School for Girls, in the same amount it received for the sale of the assets to the Federal Committee, \$35,725.

<sup>14</sup> See Johnson, *supra*.

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2 U.S.C. § 434(b) by the Federal Committee for failing to properly report its contributions and expenditures related to these activities. We address each of these possible violations in turn.

1. Use of State Committee Funds to Benefit the Federal Committee

i. Asset Sale Agreement

Federal candidates and officeholders, or entities directly or indirectly established, financed, maintained or controlled by them, are restricted from soliciting, receiving, directing, transferring, or spending nonfederal funds. See 2 U.S.C. § 441i(e)(1)(A). The State of Massachusetts permits labor organizations to make contributions to candidates, and the State Committee's disclosure reports show that it accepted union contributions during 2009. See Mass. Gen. Law. 55:8 (prohibiting corporations, but not labor organizations, from making contributions); see generally Reports of Martha Coakley, OCPF, *supra*. By transferring assets purchased with these nonfederal funds, the Respondents may have violated 2 U.S.C. § 441i(e)(1)(A).

In addition, section 110.3(d) of the Commission's regulations provides, in material part, that transfers of funds or assets from a candidate's campaign committee for a nonfederal election to his or her principal campaign committee for a federal election are prohibited. See 11 C.F.R. § 110.3(d). "The Commission, however, has permitted the transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office when such transfer was conducted under current market practices and at the usual and normal charges." See Statement of Reasons of Chairman Walther, Vice-Chairman Petersen, and Commissioners Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress); see also Advisory Opinion 1992-19 (Mike Kreider for Congress Committee) (lease of state campaign committee's computer equipment to candidate's federal campaign committee); Explanation and Justification: Transfer of Funds from

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1 State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) ("the rule should not be read  
2 to proscribe the sale of assets by the state campaign committee to the federal campaign  
3 committee, so long as those assets are sold at fair market value"). Further, the Commission's  
4 regulations define "usual and normal charge" as "the price of those goods in the market from  
5 which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R.  
6 § 100.52(d)(2).

7 The Respondents also may have violated the broader provision of 11 C.F.R. § 110.3(d),  
8 which prohibits the transfer of assets from a nonfederal campaign to a federal campaign. The  
9 Respondents do not qualify for the narrow exception to this regulation because the transfer was  
10 not conducted under current market practices. Unlike the used computer equipment in Advisory  
11 Opinion 1992-19 (Mike Kreider for Congress Committee) that was available for purchase on the  
12 open market as well as from the state committee, the assets purchased by the Coakley's federal  
13 committee were only available from a single source, the owner of [www.marthacoakley.com](http://www.marthacoakley.com).  
14 Conversely, all of the assets purchased, including the website, the campaign signs and t-shirts,  
15 and the consulting work, only had value to one buyer, namely Martha Coakley. Far from being  
16 considered a transaction conducted under current market practices, the State Committee's  
17 investment in these assets resembles an advance purchase on behalf of the Federal Committee  
18 more than an arms-length transaction.<sup>15</sup> Moreover, the timing of the transaction indicates that  
19 the transfer may not have complied with current market practices because the Federal Committee  
20 was able to purchase crucial components of its campaign infrastructure on the day Coakley  
21 announced her candidacy in the special election.

<sup>15</sup> It appears that the State Committee also never intended to recoup the cost of these assets from the Federal Committee because it designated the \$35,725 to be "purged to charity." See Reports of Martha Coakley, OCPF, *supra*. The fact that the State Committee did not intend to retain the money from the assets suggests that the transaction was not conducted under current market practices and at the usual and normal charges.

1 In addition, we have no information establishing that the State Committee, in fact, sold  
2 the assets for the usual and normal charge or received fair market value for them. In past  
3 matters, the Commission has been able to assess whether a potential transfer of assets complied  
4 with the Act when respondents provided documentation establishing that the sale of the assets  
5 was for the usual and normal charge in response to the complaint. *See, e.g.*, Statement of  
6 Reasons, *supra*, MUR 5964 (Schock for Congress) (operating agreement and invoice submitted  
7 with response) (dismissed based on *de minimis* amount of potential violation). Although the  
8 Respondents in this matter have asserted that they complied with the Act, their responses do not  
9 specifically address whether the transfer was conducted at the usual and normal charges.  
10 Moreover, neither committee reported the type of assets that were transferred, only that the assets  
11 were purchased for \$35,725.<sup>16</sup> Although Coakley apparently revealed the existence of an asset  
12 sale agreement to the Associated Press that detailed some of the items transferred, the  
13 Respondents did not provide this agreement to the Commission and have failed to offer any  
14 explanation for the circumstances or the timing of the transfer. Thus, unlike the respondents in  
15 MUR 5964 (Schock for Congress), the Respondents in this matter have not demonstrated that the  
16 transfer qualified for the limited exception to the Act's prohibition on the transfer of assets from  
17 a state to a federal campaign.

18 ii. Payments for Consultants

19 Finally, although the Respondents failed to provide any information regarding the  
20 payment for consulting services by the State Committee in their responses, Coakley's federal and  
21 state committees have denied publicly that the consultants worked on behalf of Coakley's federal  
22 candidacy while receiving payments from the State Committee. *See supra* Section II.A.1. While

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<sup>16</sup> *See* Coakley for Senate, October 2009 Quarterly Report, at 2887; *see also* Reports of Martha Coakley, OCPF, *supra* n. 13.



we have no reason to doubt the veracity of these public statements, the Respondents did not address this allegation in their responses, and any payments that directly benefited the Federal Committee could potentially be a violation of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).

## **2. Reporting**

The transfer from the State Committee to the Federal Committee, would be required to be disclosed by the Federal Committee. *See* 2 U.S.C. § 434(b). Because the Federal Committee did not report the receipt of the State Committee contribution, it appears that the Federal Committee may have violated 2 U.S.C. § 434(b) as well.

## **3. Conclusion**

Therefore, we recommend that the Commission find reason to believe that (1) Coakley (State) Committee violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by transferring assets to Coakley for Senate; (2) Martha Coakley violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by transferring and receiving assets transferred from the Coakley (State) Committee; and (3) Coakley for Senate and Nathaniel C. Stinnet, in his official capacity as treasurer, violated 2 U.S.C. §§ 441i(e)(1)(A) and 434(b), and 11 C.F.R. § 110.3(d) by receiving assets transferred from the Coakley (State) Committee and by failing to report the receipt of that contribution.

1  
2  
3  
4 Although we plan to utilize informal  
5 investigative methods, where appropriate, we recommend that the Commission authorize the use  
6 of compulsory process, including orders to submit written answers and subpoenas to produce  
7 documents, which we would use in the event the parties do not cooperate in providing this  
8 information.

9 **IV. RECOMMENDATIONS**


- 10 1. Find reason to believe that Coakley for Senate and Nathaniel C. Stimmet, in his official  
11 capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441i(e)(1)(A), and 11 C.F.R.  
12 § 110.3(d);
- 13 2. Find reason to believe that Martha Coakley violated 2 U.S.C. § 441i(e)(1)(A) and  
14 11 C.F.R. § 110.3(d);
- 15 3. Find reason to believe that Coakley (State) Committee violated 2 U.S.C.  
16 § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d);
- 17 4. Authorize the use of compulsory process;
- 18 5. Approve the attached Factual and Legal Analyses; and
- 19 6. Approve the appropriate letters.

20  
21 Thomasenia P. Duncan  
22 General Counsel

23  
24 3-29-10  
25 Date

26 BY:

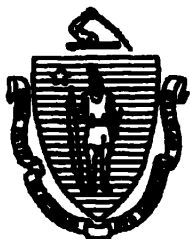
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4. Massachusetts Office of Campaign and Political Finance Memo, M-84-01

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M-84-01

Issued: January 23, 1984

Revised: December 22, 2008

TO: Interested Parties  
FROM: Michael J. Sullivan *mps*  
SUBJECT: Massachusetts and Federal Candidate Committee Issues

This memorandum outlines the provisions of state law relative to a Massachusetts candidate committee that wishes to: (1) transfer funds between that candidate's Massachusetts and federal committee, (2) solicit contributions refunded to contributors by that candidate's federal committee or (3) make expenditures to "test the waters" in connection with a possible campaign for Federal office.

**I. Transfers Between Candidate's Massachusetts and Federal Committee.**

The Massachusetts campaign finance law and regulations promulgated by the Federal Election Commission (FEC) prohibit the transfer of funds or assets between a Massachusetts candidate's federal and state political committee. Specifically, M.G.L. c. 55, § 7 provides, in pertinent part:

No candidate or candidate's committee shall receive a transfer of funds or assets from any federal political committee. No candidate or candidate's committee shall make an expenditure of, or transfer, funds or assets that were transferred on or after November 25, 1998 from a federal political committee.

Similarly, FEC regulations provide that a federal campaign committee may not receive transfers of funds or assets from that candidate's nonfederal (e.g. Massachusetts) campaign committee. See 11 CFR 110.3(d). It should be noted, however, that 11 CFR 110.3(d) allows a candidate's federal committee to solicit a contribution from a contributor who previously contributed to the candidate's state committee, after the state committee has refunded the contribution.

ATTACHMENT 4 OF 4  
P 1 of 2



## **II. Solicitation of Contributions Refunded by Candidate's Federal Committee.**

Although the campaign finance law prohibits transfers from a candidate's federal committee, it does provide that a candidate's state committee may "coordinate arrangements, with a federal committee that refunds contributions pursuant to federal law<sup>1</sup>, for a solicitation of the same contributors by the candidate's [state] committee." See M.G.L. c. 55, § 7. If such a solicitation occurs, section 7 requires that the candidate's state committee must pay the full cost of such a solicitation. In addition, the contributor must make the contribution to the candidate's state committee, if greater than \$50.00, from the contributor's checking account, or by credit or debit card. See M.G.L. c. 55, § 9.

## **III. Campaign Finance Activity while Candidate Explores Federal Candidacy.**

A candidate's state political committee is organized primarily for the purpose of handling campaign finance activity in Massachusetts state, county and municipal elections. While Massachusetts law and regulations do not prohibit a candidate's state committee from making expenditures while exploring a possible candidacy for federal office, the FEC imposes significant restrictions on such expenditures. Specifically, it is our understanding, as of the date of this memorandum, that a candidate's state committee may spend no more than \$1,000 for this purpose, and that such funds spent must be derived from sources permitted under federal law, e.g., not from corporations, unions, federal contractors, or foreign nationals. See 11 CFR 100.5(a).

## **IV. Additional Information.**

This memorandum is intended to serve only as a general guide to candidates and candidate committees which may wish to transfer funds between their candidate's federal and state political committees, solicit refunded federal contributions or "test the waters" for a possible federal candidacy.

Candidates or committee treasurers should contact the Federal Election Commission for assistance relative to the application of federal law to candidate's committee activities. The Federal Election Commission's toll free number is **1-800-424-9530**.

Questions regarding the application of state law or regulation should be directed to OCPF at 1-800-462-OCPF or 617-979-8300.

<sup>1</sup> Federal law and regulations do not specifically address the refund of contributions from a federal committee to contributors for subsequent solicitation by a state committee. The FEC has ruled, however, that such refunds may be made consistent with federal law. See FEC Advisory Opinion 1996-52.